UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,573	11/15/2006	Angus Lang	102792-495 (11161P1 US)	4431

27389 7590 06/15/2009

NORRIS, MCLAUGHLIN & MARCUS
875 THIRD AVE
18TH FLOOR
NEW YORK, NY 10022

EXAMINER	
BOYER, CHARLES I	
ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
06/15/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/552,573	LANG ET AL.	
	Examiner	Art Unit	
	Charles I. Boyer	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 April 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-12,14,16,17,19 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-12, 14, 16, 17, 19, and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to applicants' amendment and response received April 6, 2009. Claims 1, 3-12, 14, 16, 17, 19, and 20 are currently pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 16 provides for the use of a cleaning composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 16 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Before citing the references against the present claims, the examiner would like to state for the record that due to the inordinate breadth of the present claims, requiring only a multiple emulsion, the examiner maintains that a thorough search is impossible. Multiple emulsions, or triple emulsions, are well known in the art, and the examiner believes that keeping active ingredients in separate phases is the whole idea behind these emulsions. The examiner believes, therefore, that virtually every multiple emulsion in existence, at least in the detergent arts, will anticipate at least claim 1 of the present application. The examiner has cited a tiny fraction of the prior art that could be used to reject these claims. Any response from applicants to the references cited below that does not also address the fact that their claims are extremely broadly written,

together with a clear statement of what applicants consider to be the novelty of their invention, will likely not be successful in rendering these claims allowable.

2. Claims 1, 3, 4, 9-12, 14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Zhu et al, US 6,797,685.

Zhu et al teach a laundry detergent in the form of a stable W/O/W emulsion comprising surfactants in the aqueous phase (col. 15, example 5). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach a hard surface cleaner. Though this is true, it is an intended use limitation. If the present composition were to be allowed, applicants could use it for any purpose, not just as a hard surface cleaner. Accordingly, the rejection is maintained.

3. Claims 1, 3, 4, 9-12, 14, and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Simon, US 6,464,966.

Simon teaches a personal cleanser in the form of a stable W/O/W emulsion comprising surfactants in the aqueous phase (see abstract and examples 1-4). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach a hard surface cleaner. Though this is true, it is an intended use limitation. If

the present composition were to be allowed, applicants could use it for any purpose, not just as a hard surface cleaner. Accordingly, the rejection is maintained.

4. Claims 1, 3, 4, 9-12, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by St Lewis et al, US 6,268,322.

St Lewis et al teach a personal cleanser in the form of a stable W/O/W emulsion comprising surfactants in the aqueous phase (col. 14, examples 1-7). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach a hard surface cleaner. Though this is true, it is an intended use limitation. If the present composition were to be allowed, applicants could use it for any purpose, not just as a hard surface cleaner. Accordingly, the rejection is maintained.

5. Claims 1, 3, 4, 9-12, 14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Amalric et al, US 2003/0133957.

Amalric et al teach a topical composition in the form of a stable W/O/aqueous gel emulsion comprising surfactants in the aqueous phase (¶94). Note that these compositions may be used in detergent compositions (claim 12). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach a hard surface cleaner. Though this is true, it is an intended use limitation. If

the present composition were to be allowed, applicants could use it for any purpose, not just as a hard surface cleaner. Accordingly, the rejection is maintained.

6. Claims 1, 3-12, 14, and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Glenn et al, WO 02/069917.

Glenn et al teach a personal treatment composition in the form of a stable O/W/O emulsion comprising hydrophobic silica and fatty alcohol in the aqueous phase (page 50, example III). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

Applicants have traversed this rejection on the grounds that the reference does not teach a hard surface cleaner. Though this is true, it is an intended use limitation. If the present composition were to be allowed, applicants could use it for any purpose, not just as a hard surface cleaner. Accordingly, the rejection is maintained.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1, 3-12, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amalric et al, US 2003/0133957.

9. Amalric et al are relied upon as set forth above. The multiple emulsions may be stabilized with a hydrophobic silica (¶64). Accordingly, it would have been obvious to one of ordinary skill in the art to incorporate a hydrophobic silica stabilizer in the composition of ¶94 with a reasonable expectation of successfully forming an effective detergent composition.

10. Claims 1, 3, 4, 9-12, 14, 16, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wegele et al, US 6,270,878.

Wegele et al teach wipes for hard surface cleaning (col. 22, lines 36-40). The reference teaches that multiple emulsions may be impregnated in these wipes particularly if two or more components are incompatible with each other, for example, an acid and a bicarbonate can be incorporated in separate polar phases if a foaming action is desired (col. 22, lines 41-62). The reference does not specifically teach a wipe impregnated with a multiple emulsion, however, as such a multiple emulsion-impregnated wipe is clearly contemplated by the reference, it would have been obvious to one of ordinary skill in the art to formulate such a wipe with a reasonable expectation of successfully obtaining a foaming hard surface cleaner.

11. Claims 1, 3, 4, 9-12, 14, 16, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandvick, US 4,810,407.

Sandvick teaches a multi-surface polish composition in the form of an oil-in-water emulsion (see abstract). The reference teaches that the oil-in-water emulsion may be

added to water to form a multiple emulsion (col. 8, lines 26-37). The reference does not specifically teach a multiple emulsion dispensed from a spray trigger, however, as such a multiple emulsion polish is clearly contemplated by the reference, it would have been obvious to one of ordinary skill in the art to formulate such a polish with a reasonable expectation of successfully obtaining a hard surface polish.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles I. Boyer whose telephone number is 571 272 1311. The examiner can normally be reached on M-Th 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571 272 1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Charles I Boyer
Primary Examiner
Art Unit 1796

/Charles I Boyer/
Primary Examiner, Art Unit 1796